

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SAINT PAUL CITY COUNCIL

In Re the Application by Tattoos From Grease, Inc. for a Class N License	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION</b>

This matter was heard by Administrative Law Judge Beverly Jones Heydinger, on February 2, 2006, in Room 40B, Saint Paul City Hall – Ramsey County Courthouse, 15 West Kellogg Boulevard, Saint Paul, Minnesota. The hearing was held pursuant to a Notice of Hearing dated January 20, 2005. Rachel Gunderson, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, Saint Paul, Minnesota, 55102, appeared on behalf of the City's Office of License, Inspections and Environmental Protection (LIEP). Gregory A. Lehman, 839 East 4th Street, Apartment 2, Saint Paul, Minnesota, 55106, appeared on behalf of Tattoos from Grease, Inc., d/b/a Tattoos from Grease. The record closed February 2, 2006, at the close of the hearing. There were no additional submissions.

**NOTICE**

This report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation.<sup>1</sup> Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of Saint Paul, 170 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

**STATEMENT OF THE ISSUE**

The issue presented at this hearing was:

Does the Applicant's operation of a tattoo parlor at 839 East 4th Street, Saint Paul, Minnesota, Apartment 2, comply with the provisions for a home occupation pursuant to § 65.141 of the Saint Paul City Code?

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<sup>1</sup> Saint Paul Legislative Code §§ 310.05 (c-1), 310.06.

## FINDINGS OF FACT

1. On August 20, 2005, Gregory A. Lehman ("Applicant") applied to the City of Saint Paul ("City") for a Class N license to operate a tattoo parlor, Tattoos From Grease. In his application, Applicant listed the same home and business address: 839 East 4th Street, Saint Paul, Minnesota, 55106, except that his home address also included "# 2". The business address provided on the application did not include an apartment number.<sup>2</sup>

2. As part of his application, the Applicant completed a Home Occupation Affidavit, agreeing to the conditions that apply to a home occupation.<sup>3</sup>

3. Jeffery J. Hawkins is a LIEP Inspector III for the City and is responsible for reviewing licensed businesses in Saint Paul for compliance with the zoning code. Based on information provided to Mr. Hawkins by a city fire inspector and after personally inspecting the Applicant's property on November 15, 2005, Mr. Hawkins sent the Applicant a letter dated November 16, 2005, describing the City's home occupation requirements, concluding that Applicant's tattoo business was not incidental and secondary to the residential use of the property, and that the space was not the Applicant's principal residence.<sup>4</sup> It was returned to the City by the United States Postal Service.<sup>5</sup>

4. A second letter, dated November 29, 2005, was also sent to the Applicant. The second letter was virtually identical to the November 16, 2005 letter, except that it noted that the first letter had been returned. This second letter also stated that Applicant's appeal period had expired, and LIEP was recommending that the application be denied.<sup>6</sup>

5. The property at 839 East Fourth Street is zoned as "RT1." In order to be licensed as a tattoo parlor in an RT1 zone, the business must qualify as a home occupation under the City zoning code.<sup>7</sup>

6. The Applicant was sent a Notice of Intent to Deny License Application, dated December 20, 2005, to 649 Concord Street North, South Saint Paul, MN 55075-1114.<sup>8</sup> The Applicant appealed the denial,<sup>9</sup> and this hearing was scheduled.<sup>10</sup>

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<sup>2</sup> Ex. 3-1.

<sup>3</sup> Ex. 2-1.

<sup>4</sup> The letter dated November 16, 2005, was addressed to "Tattoos From Grease, Gregory A. Lehman, 839 East 4th Street, Saint Paul, Mn 55106." (Ex. 4-2.) This address corresponds to the business address provided by the Applicant on his Class N City License Application. (Ex. 3-1.)

<sup>5</sup> Ex. 4-2; Ex. 5-1.

<sup>6</sup> Ex. 4-1.

<sup>7</sup> Test. of Jeffrey J. Hawkins.

<sup>8</sup> Exs. 1-1, 5-1.

<sup>9</sup> Exs. 6-1.

<sup>10</sup> Ex. 8-1.

7. During his initial investigation of 839 East 4th Street, Apartment 2, on November 15, 2005, Mr. Hawkins estimated that the residential use of the apartment was about ten percent of the total apartment's use. In what appeared to be the former living room, Mr. Hawkins saw a cot, a microwave oven, and a small beverage refrigerator. Mr. Hawkins also saw filling cabinets, a desk, and a computer. In the kitchen area, the unit's oven had been removed and a large refrigerator was in the middle of room. Mr. Hawkins observed that the bedroom and porch had several couches and were being used as a waiting area; the tattooing operation was occurring in the spaces typically considered the kitchen and dining rooms. Based on Mr. Hawkins review of a 1994 floor plan of the unit from an unrelated application, Mr. Hawkins concluded that a wall separating the bedroom and porch had been altered. Although Mr. Hawkins did not examine the unit's closets, he did not see any dressers or other clothing storage.<sup>11</sup>

8. As a part of his November investigation, Mr. Hawkins learned that the Applicant's auto registration and driver's license listed the Applicant's primary residence at 649 North Concord Street, South Saint Paul. Mr. Hawkins also found a January 2001, LIEP dog license record that showed the Applicant had stated that he was no longer a Saint Paul resident.<sup>12</sup>

9. On several occasions, Mr. Hawkins observed the Applicant's vehicle parked near the building at 839 East 4th Street. But on other occasions when he would expect a resident to be at home, Mr. Hawkins did not observe the Applicant's vehicle.<sup>13</sup>

10. Based on the information collected, Mr. Hawkins concluded that Mr. Lehman was not actually residing at the Fourth Street address.

11. In June, 2005, the Applicant took the necessary steps to declare 839 East Fourth Street, Apartment 2, as his homestead.<sup>14</sup> The Applicant's driver's license was renewed in December, 2005, with the address at 839 East 4th Street, Apt 2.<sup>15</sup> The Applicant's water bill dated January 23, 2005, and energy bill for the period December 13, 2005 through January 16, 2006 were sent to and received by the Applicant at 839 East 4th Street, Apt 2.<sup>16</sup> No utility bills were offered for the time period of Mr. Hawkins' inspection.

12. The Applicant operated Tattoos From Grease in Saint Paul from 1992 through 2005.<sup>17</sup> Prior to moving to 839 East 4th Street, the Applicant resided at 649

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<sup>11</sup> Test. of J. Hawkins; Ex. 4-1.

<sup>12</sup> Ex. 4-1; Test. of J. Hawkins.

<sup>13</sup> Test. of J. Hawkins.

<sup>14</sup> Exs. 15, 18.

<sup>15</sup> Test. of Gregory Lehman; Exs. 14, 19.

<sup>16</sup> Exs. 17, 20, 21 22.

<sup>17</sup> Test. of G. Lehman; Ex. 3-3.

North Concord Street, South Saint Paul, Minnesota, 55075.<sup>18</sup> On July 30, 2005, the Applicant executed a one-year lease with Sheila Ramirez for that property.<sup>19</sup>

13. The Applicant moved to 839 East 4th Street in June, 2005, to operate his tattoo business as a home-based business. Due to a great deal of stress related to the relocation and his overall employment situation, the Applicant has not finished organizing and preparing his space. The Applicant removed the oven from the apartment because he does not cook.<sup>20</sup>

14. The Applicant's drawing of his intended use of the apartment at 839 East 4th Street included two waiting areas each with a stool and a couch, a bath, a hallway, two counters of which one has a sink, and a "tat2" chair.<sup>21</sup> A computer-generated drawing of the space is similar and shows a kitchen area as part of the tattoo area and the relative size of the living/sleeping quarters.<sup>22</sup>

15. Any Finding of Fact more properly termed as a Conclusion is hereby adopted as a Conclusion.

## **CONCLUSIONS**

1. The Administrative Law Judge and the Saint Paul City Council have jurisdiction to consider the Applicant's appeal of the City's denial of a Class N license.<sup>23</sup>

2. The Applicant received timely and proper notice of the hearing and the City has complied with all relevant substantive and procedural requirements of statute and rule.<sup>24</sup>

3. The City has authority to deny, suspend, or revoke a license and to impose penalties for the violation of applicable statutes and rules.<sup>25</sup>

4. The City has the authority to deny a home occupation, Class N, license to an applicant whose residential use of its property is incidental and secondary to the business use of the same property.<sup>26</sup>

5. The City has proved by a preponderance of the evidence that the Applicant's use of his property at 839 East 4th Street, apartment two, is primarily as a tattoo parlor and not primarily as a residence, and fails to meet the requirements for a home occupation, Class N license.

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<sup>18</sup> Test. of G. Lehman.

<sup>19</sup> Ex. 23.

<sup>20</sup> Test. of Gregory Lehman.

<sup>21</sup> Exs. 2-2, 2-3.

<sup>22</sup> Ex. 24.

<sup>23</sup> Saint Paul Legislative Code §§ 310.05, 310.06; Minn. Stat. § 14.55.

<sup>24</sup> See Minn. Stat. §§ 14.57 – 14.61; Saint Paul Legislative Code § 310.05.

<sup>25</sup> Saint Paul Legislative Code § 310.06.

<sup>26</sup> Saint Paul Legislative Code § 65.141.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the City of Saint Paul DENY the Applicant a home occupation, Class N license.

Dated this 27th day of April, 2011

/s/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Report: Taped-recorded (2 tapes)

### **MEMORANDUM**

The Saint Paul Legislative Code provides that license applicants may pursue an occupation in their dwelling unit so long as the occupational use is incidental and secondary to its primary use as a residence. It allows:

Sec. 65.141. Home occupation.

An occupation carried on in a dwelling unit by a resident thereof, provided that the use is limited in extent, incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof.

*Standards and conditions:*

(a) A home occupation may include small offices, service establishments or homecrafts which are typically considered accessory to a dwelling unit. Such home occupations shall involve only limited retailing, by appointment only, associated with fine arts, crafts or personal services as allowed in the B1 local business district.

. . .

(e) No structural alterations or enlargements shall be made to the dwelling for the primary purpose of conducting the home occupation.

. . .

(k) For the purposes of this section, "principal residence" shall mean the dwelling where a person has established a permanent home from which the person has no present intention of moving. A principal residence is not established if the person has only a temporary physical presence in the dwelling unit.

The Applicant does not dispute that he has been using apartment two at 839 East 4th Street, Saint Paul, Minnesota, 55106, as a place of business. He has demonstrated that the same address is his residence. He has registered it as his homestead, listed it on his home address on his drivers license and has rented out his

apartment in South Saint Paul. He also receives some mail, including utility bills, at the Fourth Street address.

The Applicant's use of apartment two at 839 East 4th Street does include some elements of residential use such as a cot and small refrigerator. However, the Applicant's own drawing of the floor plan for apartment two uses business terms, such as "waiting area" and "counter," to describe the majority of the apartment's use. A LIEP inspector's visual observation of the apartment further supports the conclusion that, although Mr. Lehman may in fact live in apartment two, only a small portion of the apartment is used for residential purposes. The majority of the space is devoted to the tattoo business. The evidence shows that the apartment's use as a residence is incidental and secondary, but the City's code requires that the occupational use be incidental and secondary to the residential use.

The LIEP inspector's reliance on a 1994 layout of the apartment was given little weight because it was more than ten years old. Similarly, the presence or absence of Mr. Lehman's car when the investigator passed by was given little weight.

Because the Applicant failed to show that his apartment at 439 East 4<sup>th</sup> Street was primarily a residence and only incidentally and secondarily used as a business, the Administrative Law Judge recommends that the Applicant's application for a home occupation, Class N license be denied.

**B.J.H.**